

House Bill 512

By: Representatives Watson of the 172nd, Holmes of the 129th, McCall of the 33rd, Mathis of the 144th, Dickey of the 140th, and others

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 8 of Title 2 of the Official Code of Georgia Annotated, relating to agricultural commodities promotion, so as to provide for an Agricultural Commodity Commission for Propane; to provide for definitions; to provide for composition and powers and terms of office of the commission; to provide for representation of the commission by the Attorney General of Georgia; to provide for funds to be held in trust; to provide for bonding of those handling trust funds; to provide for liability of members and employees of the commission; to provide for marketing orders and hearings regarding same; to provide for referenda and items included in the referenda regarding the effectiveness of marketing orders; to render unlawful certain activities regarding performance noncompliance or violations of marketing orders; to provide for civil penalties and injunctive relief; to authorize promulgation of regulations; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 8 of Title 2 of the Official Code of Georgia Annotated, relating to agricultural commodities promotion, is amended by adding a new article to read as follows:

"ARTICLE 6

2-8-200.

As used in this article, the term:

(1) 'Commission' means the Agricultural Commodity Commission for Propane created under this article.

(2) 'Dealer' means any person to whom the office of the Commissioner of Insurance issues a liquid propane license. The term shall not include any person who offers for

retail sale propane in containers of less than 50 pounds water capacity and whose business does not involve the filling or transportation of such containers.

(3) 'Distributor' means any person engaged in the business of selling propane to a dealer in the state.

(4) 'Marketing order' means an order issued pursuant to this article establishing an assessment for financing the programs established under this article.

(5) 'Person' means an individual, sole proprietorship, partnership, limited partnership, firm, corporation, limited liability company, association, or any other business entity, or any combination thereof.

2-8-201.

The Agricultural Commodity Commission for Propane is hereby created. The commission shall be organized and constituted, have corporate existence, possess powers and duties, and be governed and controlled as provided in this article.

2-8-202.

(a) The commission shall be composed of:

(1) Three members elected by the House Committee on Agriculture and Consumer Affairs with a quorum present and a majority of those present concurring, each of whom shall be a dealer or distributor and shall not be a member of the General Assembly;

(2) Two members elected by the Senate Agriculture and Consumer Affairs Committee with a quorum present and a majority of those present concurring, each of whom shall be a dealer or distributor and shall not be a member of the General Assembly; and

(3) One member elected by a majority of the members of the commission as specified in paragraphs (1) and (2) of this subsection, who shall be a dealer or distributor and shall not be a member of the General Assembly.

(b) Vacancies in the membership of the commission shall be filled in the same manner as that of the original election of such members. Any person selected to fill a vacancy shall serve for the remainder of the unexpired term.

(c) There shall be no compensation or reimbursement of expenses for members of the commission.

(d) It shall be the duty of the commission to certify to the Secretary of State the membership of the commission and each change in membership as the same occurs.

(e) The commission shall name its chairperson and determine a quorum for the transaction of business.

2-8-203.

(a) The commission is authorized to appoint advisory boards, special committees, and individuals, including technical and clerical personnel, to advise, aid, and assist the commission in the performance of its duties. Compensation for such services shall be fixed by the commission and shall be paid from the funds of the commission.

(b) The Attorney General shall represent the commission in legal matters and shall be the attorney for the commission. If the Attorney General determines that outside legal counsel is necessary or desirable in connection with any legal matter of the commission, he or she shall so inform the commission and, upon approval of the commission, shall employ such outside counsel. Compensation for such outside counsel shall be agreed upon between such counsel and the Attorney General, subject to the approval of the commission. Such compensation shall be paid from the funds of the commission. Neither Code Section 16-10-9 nor any other law shall prohibit or be applicable to the employment of such counsel.

(c) The commission is authorized to accept donations, gifts, and other property and to use the same for commission purposes.

(d) The commission is authorized to acquire, lease as lessee, purchase, hold, own, and use any franchise or real or personal property, whether tangible or intangible, or any interest therein and, whenever the same is no longer required for purposes of the commission, to sell, lease as lessor, transfer, or dispose thereof or exchange the same for other property or rights which are useful for its purposes.

2-8-204.

The commission shall be a public corporation and an instrumentality of the State of Georgia. By that name, style, and title, the commission may contract and be contracted with, implead and be impleaded, and complain and defend in all courts. The commission shall assume the duties and exercise the authority provided in this article without further formality than that provided in this article. Each member of the commission shall be a public officer and shall take an oath of office to faithfully perform his or her duties. Such oath shall be administered by the Governor or some other person qualified to administer oaths.

2-8-205.

The commission is authorized, and it shall be its duty to receive, collect, and disburse the funds of the commission.

2-8-206.

Funds received by the commission under this article shall be held in trust for the commission. Such funds shall be deposited, accounted for, and disbursed in the same manner as that of the funds of this state but shall not be required to be deposited in the state treasury and appropriated therefrom. It is the express intent and purpose of this article to authorize the receipt, collection, and disbursement by the commission of such funds as trust funds of the commission without complying with the requirement applicable to funds collected for the use and benefit of the state.

2-8-207.

Any persons who handle funds under this article shall be bonded with good and sufficient surety in an amount determined by the commission for the accounting of such funds. All checks, drafts, and negotiable instruments which are drawn on or payable from the funds of the commission shall be signed by the chairperson of the commission.

2-8-208.

The members and employees of the commission shall not be held individually responsible to any dealer or distributor or to any other person for errors in judgment, mistakes, or other acts as principal, agent, person, or employee, except for their own individual acts of dishonesty or crime. No such member, person, or employee shall be held individually responsible for any act or omission of any other member of the commission. The liability of the members of the commission shall be several and not joint, and no member shall be liable for the default of any other member.

2-8-209.

(a) The commission is authorized to issue, administer, and enforce marketing orders.

(b)(1) Whenever the commission has reason to believe that the issuance of a marketing order will tend to effectuate the declared policy of this article with respect to propane, it shall give due notice of and an opportunity for a public hearing thereon.

(2) Notice of any hearing called for such purpose shall be given by the commission by publishing a notice of such hearing for a period of not less than five days in a newspaper of general circulation published in the City of Atlanta and in such other newspapers as the commission may prescribe. No such public hearing shall be held prior to five days after the last day of such period of publication. The commission shall also mail a copy or communicate electronically such notice of hearing and a copy of such proposed marketing order or proposed amendments to all dealers and distributors of propane whose names and addresses are on file with the commission. Such notice of hearing shall in all

124 respects comply with the requirements of Chapter 13 of Title 50, the 'Georgia
125 Administrative Procedure Act.'

126 (3) The hearing shall be public, and all testimony shall be received under oath. A full
127 and complete record of the proceedings at such hearing shall be made and maintained on
128 file in the office of the commission. The hearing shall, in all respects, be conducted in
129 accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.' The
130 hearing may be conducted by the commission or by a member of the commission, as may
131 be designated by the commission in each instance, but no decision shall be made based
132 on hearings conducted other than by the commission itself, at which a majority of the
133 members thereof are present, until the members of the commission have been afforded
134 an opportunity to review the hearing record. When the commission conducts hearings,
135 its recommendation shall be based on the findings reached after a review of the record
136 of such hearings.

137 2-8-210.

138 If, upon the basis of the record of testimony and documentary evidence received at the
139 hearing as provided for in Code Section 2-8-209 and the facts officially noticed therein
140 from official publications or institutions of recognized standing, the commission
141 determines that the issuance of a marketing order will tend to effectuate the intent and
142 purpose of this article, it may recommend the promulgation of a marketing order with
143 respect to the matters specified in the hearing notice and supported by the record; such
144 order shall account for provisions to promote propane education, training, safety
145 compliance, equipment replacement for low-income customers, marketing, advertising,
146 promotion, and customer rebates to encourage energy-efficient appliance and equipment
147 purchases by residential, commercial, industrial, motor fuel or agricultural consumers. No
148 funds collected pursuant to this article shall be used in any manner for lobbying or for
149 influencing state or federal legislation. No more than 10 percent of the funds collected and
150 no less than the actual administrative expense pursuant to this article shall be used for
151 administrative expenses relating to the expenditure of the funds. The commission may
152 advance costs of conducting referenda pursuant to this article and reimburse those costs
153 from the assessment funds.

154 2-8-211.

155 (a)(1) No marketing order issued pursuant to this article shall be made effective by the
156 commission until a referendum thereon is held.

157 (2) The commission shall determine:

158 (A) The amount of the proposed assessment established by the marketing order;

(B) The time and place of the referendum;

(C) Procedures for conducting the referendum and the counting of votes;

(D) The proposed effective date for the imposition of the assessment established by the marketing order, which shall be no less than 90 days from the date the referendum ballot is required to be returned to the commission in order to be considered on the question presented; and

(E) Any other matters pertaining to the referendum.

(b) The amount of the proposed assessment established by the marketing order shall be stated on the referendum ballot. The amount may not exceed four-tenths of one cent for each gallon of propane sold in this state by distributors to dealers.

(c) All dealers may vote in the referendum. Each dealer shall have one vote. Any dispute over eligibility to vote or any other matter relating to the referendum shall be resolved by the commission. The commission shall make reasonable efforts to provide all dealers with notice of the referendum and an opportunity to vote.

(d) A proposed assessment shall become effective if more than 50 percent of the eligible dealers in the state vote and more than 50 percent of the eligible votes cast by the dealers are cast in favor of the assessment. If the assessment is approved by the referendum, then the commission shall notify the department of the amount and the effective date of the assessment. The department shall notify all dealers of the assessment.

(e)(1) Each distributor, as the owner of propane at the time of odorization, or at the time of import of odorized propane, shall make the assessment based on the volume of odorized propane sold in this state and placed in commerce in this state.

(2) Each distributor shall collect the assessment from the dealer to whom the sale is made and shall remit to the commission the sum of the amount of the assessment multiplied by the number of gallons of propane sold to any dealer during the assessment period.

(f) A distributor shall keep records of the number of gallons of propane sold to dealers. All documents or records regarding purchases and sales shall be made available to the commission upon its written request for the purpose of determining the distributor's compliance with the provisions of this article. The commission shall keep the records confidential and shall not disclose the records except to its accountants, attorneys, or financial advisors without a court order directing it to do so.

2-8-212.

A dealer can opt out of this article only once per year between September 1 and September 30. Any dealer who opts out of this article in accordance with this subsection shall not be eligible to receive the benefit of any marketing order for a period of one year

following the date of his or her request to opt out under this Code section and shall not be entitled to the payment of any interest by the commission on the amount refunded.

2-8-213.

A referendum shall be held once every five years to vote on the continuation of the commission. For the results to be valid, at least 50 percent of the eligible dealers in this state must vote, and if more than 50 percent of the dealers voting vote in favor of continuing the commission, then the commission will continue for another five years.

2-8-214.

(a) Any assessment established in accordance with this article shall constitute a personal debt of every person so assessed and shall be due and payable to the commission when payment is called for by the commission. If such person fails to pay any such assessment, the commission may file an action against such person in a court of competent jurisdiction for the collection thereof.

(b) In the event that any person duly assessed pursuant to this article fails to pay to the commission the amount so assessed, the commission shall be authorized to add to such unpaid assessment an amount not exceeding 10 percent of such unpaid assessment to defray the cost of enforcing the collection of the unpaid assessment.

(c) The provisions of this Code section shall be cumulative, and any other remedies may be pursued concurrently until satisfaction is obtained. Any penalty recovered shall become a part of the principal assessment levied and shall be for the use of the commission.

2-8-215.

(a) Any person who violates any provision of this article or any marketing order duly issued and effective under this article shall be civilly liable to the commission for a penalty in an amount not to exceed \$500.00 for each and every violation thereof, the amount of such penalty to be fixed by the commission after notice and hearing as provided by Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' for contested cases and recoverable by a civil action brought in the name of the commission. Any moneys recovered pursuant to this Code section shall be applied for the use of the commission.

2-8-216.

(a) The Attorney General of this state shall, upon complaint by the commission, or may, after examining the complaint and the evidence and believing that a violation has occurred, bring an action in the superior court in the name of the commission for civil penalties or

226 for injunctive relief, including the specific performance of any marketing order duly issued
227 by the commission under this article.

228 (b) If there is an application for a preliminary injunction, a hearing of any order to show
229 cause why such injunction should not be issued, or a hearing of any motion for a
230 preliminary injunction suggesting that, or if the court finds in any such action that a
231 defendant therein is violating or has violated any provision of this article or of any
232 marketing order duly issued by the commission under this article, then the court shall
233 enjoin the defendant from committing further violations and may compel specific
234 performance of any obligation imposed by a marketing order issued by the commission
235 under this article. It shall not be necessary in such event to allege or prove lack of an
236 adequate remedy at law.

237 (c) In any action brought by the Attorney General to enforce any of the provisions of this
238 article or of any marketing order issued by the commission and effective under this article
239 or of any rule or regulation issued by the commission pursuant to any marketing order, a
240 judgment in favor of the commission may provide that the defendant pay the commission
241 the costs it incurred in the prosecution of such action.

242 2-8-217.

243 (a) The commission on its own motion or upon the complaint of any interested party may
244 refer to the Attorney General of this state or to any prosecuting attorney of this state any
245 charges of a violation of any provision of this article or of any marketing order or any rule
246 or regulation issued by the commission and effective under this article for the institution
247 of legal proceedings thereupon or, if the commission deems it necessary or advisable,
248 immediately call an administrative hearing, pursuant to the provisions of Chapter 13 of
249 Title 50, the 'Georgia Administrative Procedure Act,' governing contested cases, to
250 consider the charges set forth in such verified complaint.

251 (b) In case the matter is referred directly by the commission to the Attorney General or any
252 prosecuting attorney, it shall be the duty of such officer, if after examination of the
253 complaint and the evidence he or she believes that a violation has occurred, to bring an
254 appropriate action or actions in a court or courts of competent jurisdiction.

255 (c) After an administrative hearing, if the commission finds that a violation has occurred,
256 it shall enter its findings and notify the parties to such complaint. In its discretion, the
257 commission shall either refer the matter to the Attorney General for the institution of legal
258 proceedings or notify such parties to cease and desist from further violation. Upon the
259 refusal or failure of such parties to comply or if the commission finds that the facts or
260 circumstances warrant immediate prosecution, the commission shall file a complaint with
261 the Attorney General or with any prosecuting attorney of this state, requesting that such

262 officer commence any or all actions authorized in this article against such respondent or
263 respondents in a court of competent jurisdiction.

264 2-8-218.

265 (a) Any person who willfully renders or furnishes a false or fraudulent report, statement,
266 or record required pursuant to this article or any marketing order effective under this article
267 shall be guilty of a misdemeanor.

268 (b) Any person who violates any provision of this article or any provision of any
269 marketing order duly issued by the commission under this article shall be guilty of a
270 misdemeanor.

271 (c) The penalties and remedies prescribed in this article with respect to any violation
272 mentioned shall be concurrent and alternative. Neither singly nor combined shall such
273 penalties and remedies be exclusive; rather, either singly or combined, such penalties and
274 remedies shall be cumulative with any and all other civil, criminal, or alternative rights,
275 remedies, forfeitures, or penalties provided or allowed by law with respect to any such
276 violation.

277 2-8-219.

278 The department shall promulgate rules for the administration and enforcement of this
279 article. The promulgation, adoption, and amendment of rules and regulations by the
280 commission shall be subject to the requirements of Chapter 13 of Title 50, the 'Georgia
281 Administrative Procedure Act'."

282 **SECTION 2.**

283 All laws and parts of laws in conflict with this Act are repealed.